

**Thomas Jefferson to James Madison, July 15, 1801,
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TO THE SECRETARY OF STATE J. MSS. (JAMES MADISON)

July 15, 1801.

Whether prizes and the proceeds of them taken after the date of the treaty with France can be restored by the Executive, or need an act of the legislature?

The constitution has authorized the ordinary legislature alone to declare war against any foreign nation. If they may enact a perfect, they may a qualified war, as was done against France. In this state of things they may modify the acts of war, and appropriate the proceeds of it. The act authorizing the capture of French armed vessels and dividing and appropriating their proceeds, was of this kind.

The constitution has given to the President and Senate alone the power (with the consent of the foreign nation) of enacting peace. Their treaty for this purpose is an absolute repeal of the declaration of war, and of all laws authorizing or modifying war measures. The treaty with France had this effect. From the moment it was signed all the acts legalizing war measures ceased *ipso facto*; and all subsequent captures became unlawful. Property wrongfully taken from a friend on the high sea is not thereby transferred to the captor. In whatever hands it is found it remains the property of those from whom it was taken; and any person possessed of it private or public, has a right to restore it. If it comes to the hands of the executive they may restore it. If into those of the legislature (as by formal payment into the Treasury) they may restore it. Whoever, private or public, undertakes

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to restore it, takes on themselves the risk of proving that the goods were taken without authority of law, and consequently that the captor had no right to them. The executive, charged with our exterior relations, seems bound, is satisfied of the fact, to do right to the foreign nation, and take on itself the risque of justification. Submitted to Mr. Madison's consideration.